



# Health System Law and Policy

## Volume I

**Professor Colleen M. Flood**

**January – April, 2004**

**Faculty of Law  
University of Toronto**

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# HEALTH SYSTEM LAW AND POLICY

## [LAW 404HS]

**January –April 2004**

**Tuesday: 4:10-6:00 pm, Solarium FA2**

### **COURSE OUTLINE**

January 6th

#### **INTRODUCTION**

- Expectations regarding seminar participation
- Paper selection and writing
- Handout of possible paper topics
- Discussion of an interdisciplinary approach to policy analysis: law, economics, and political science
- Overview of the course

Course Outline.....	1-9
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Possible Paper Topics.....	11-14
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### **VOLUME ONE**

January 13<sup>th</sup>

#### **Chapter One**

#### **THE CASE FOR GOVERNMENT INTERVENTION IN HEALTH CARE: MARKET FAILURE AND DISTRIBUTIVE JUSTICE**

C. M. Flood, "Chapter 2: Arguments in Economics and Justice for Government Intervention in Health Insurance and Health Service Markets" in C. M. Flood, *International Health Care Reform: A Legal, Economic and Political Analysis* (Routledge: London, 2000).....HANDOUT

T. Menzel, "Equality, Autonomy and Efficiency: What Health Care System Should We Have?" (1992) 17: 1 The Jnl. of Med. & Philosophy 33. ....HANDOUT

Allen E. Buchanan, The Right to a Decent Minimum

Of Health Care, 13 Phil. & Pub. Aff. 55 (1984).....HANDOUT

### Supplementary Reading

R. Korobkin, "Symposium: Determining Health Care Rights from Behind a Veil of Ignorance" (1998) U. Ill. L. Rev. 801.

J. Dougherty, "An Axiology for National Health Insurance" (1992) 20: 1-2 Law, Medicine, & Health Care 82.

T. Rice, "Can Markets Give Us The Health System We Want?" (1997) 22( 2 ) Jnl. of Health Politics, Policy and Law 383.

N. Barr, "Economic Theory and the Welfare State: A Survey and Interpretation" (1992) XXX J. Econ. Lit. 741, at Part VI. "Assessment 2: Medical Care".

S. Rathgeb Smith and M. Lipsky, "Privatization in Health and Human Services: A Critique" (1992) 17 (2) Jnl. of Health Politics, Policy and Law 233.

R. G. Evans, "Going for the Gold: The Redistributive Agenda Behind Market-Based Health Care Reform" (1997) 22 (2) Jnl. of Health Politics, Policy and Law 427

January 20th

### **Chapter Two**

### **AN OVERVIEW OF THE CANADIAN HEALTH CARE SYSTEM: DO WE NEED MORE THAN JUST MONEY?**

C. M. Flood, "The Anatomy of Medicare", in J. Downie, T. Caulfield & C. M. Flood (eds.) *Canadian Health Law and Policy* (2<sup>nd</sup> Edition) (Butterworths: Toronto, 2002). .....HANDOUT

Gerard W. Boychuk, "The Changing Political and Economic Environment of Health Care in Canada", Discussion Paper No. 1, Commission on the Future of Health Care in Canada,.....HANDOUT

### Supplementary Reading

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*

C.M. Flood and T. Archibald, "The Illegality of Private Health Care in Canada" (2001) 164(6) Can Med Assoc Jnl 825-830

C. David Naylor, "Health Care in Canada: Incrementalism Under Fiscal Duress" (1999) 18: 3 Health Affairs 9.

January 27<sup>th</sup>

**Chapter Three**

**REFORMING THE CANADA HEALTH ACT AND IMPROVING  
ACCOUNTABILITY**

The *Canada Health Act*, S.C. 1984, c. 6.....

Colleen M. Flood & Sujit Choudhry, *Strengthening the Foundations: Modernizing the Canada Health Act*, Discussion Paper No. 13, Commission on the Future of Health Care in Canada.....

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapter 2, “Health Care, Citizenship and Federalism”.....

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Part I, Accountability, Part III, Health Care Guarantee.....

February 3<sup>rd</sup>

**Chapter Four**

**THE MEDICARE BASKET: HOW DO WE DECIDE WHAT TO PUBLICLY  
FUND?**

D. Callahan, “What is a Reasonable Demand on Health Care Resources: Designing a Basic Package of Benefits” (1992) 8 *The Jnl. of Contemporary Health Law* 1....

Jacobs, Marmor and Oberlander, “The Oregon Health Plan and the Political Paradox of Rationing”(1999) 24: 1 *Jnl of Health Politics Policy and Law* 161.....

Colleen M. Flood, Mark Stabile, and Carolyn H. Tuohy, “The Borders of Solidarity: How Countries Determine the Public/Private Mix in Spending and the Impact on Health Care”, in (2002) 12: 2 *Health Matrix: Jnl. Of Law-Medicine*.....

Kevin. A. Schulman et ors, “The Effect of Race and Sex on Physicians’ Recommendations for Cardiac Catheterization” (1999) 340 *The New England Jnl. of Medicine* 618-626.....

Government of Ontario Press Release, “Update – Clarification of OHIP coverage of hearing tests”, 9 August 2001.....

Supplementary Reading

C. J. Halligan, “‘Just What The Doctor Ordered’: Oregon’s Medicaid Rationing Process and Public Participation In Risk Regulation” (1995) 83 *Georgetown Law Journal* 2697

February 10<sup>th</sup>

**Chapter Five**

**ADMINISTRATIVE LAW CHALLENGES TO RATIONING HEALTH CARE**

- C. Abraham, “Tenacious woman scores medical victory,”  
*Globe and Mail*, Fri., Aug. 27, 1999.....V, 1-2
- Health Insurance Act R.S.O. H.6, ss. 20-21. ....V, 3-4
- Health Insurance Act – General Regulation, R.R.O. 1990, Reg. 552, s. 28.5.....V, 5-6
- Stein v. Québec (Regie de l'Assurance-maladie)*, [1999] Q.J. No. 2724.....V, 7-16
- R v. Cambridge District Health Authority ex parte B.*  
[1995] 1 FLR 1055.....V, 17-25
- Shortland v. Northland Health Ltd* [1998] 1 NZLR 433.....V, 26-39

**NO CLASSES—READING WEEK – February 16-20**

February 24<sup>th</sup>

**Chapter Six**

**CHARTER AND CONSTITUTIONAL CHALLENGES TO RATIONING  
HEALTH CARE IN CANADA**

- Cameron v. Nova Scotia (Attorney General)*,  
[1999] 177 DLR (4<sup>th</sup>) 611 (edited).....VI, 1-30
- Auton (Guardian ad litem of) v. British Columbia  
(Minister of Health)*, [2000] B.C.J. No. 1547 (edited).....VI, 31-47
- Stanley H. Hartt & Patrick J. Monahan, *The Charter and Health Care: Guaranteeing  
Timely Access to Health Care for Canadians*, C.D. Howe Institute Commentary, No. 164,  
May 2002, pp. 8—28 (edited) .....VI, 48-69
- Chaoulli c. Quebec (Procureure generale)* [2000] J.Q. No. 479 (QL) (Quebec Superior  
Court), Piche J., Feb. 25 2000.....VI, 70-74

March 2<sup>nd</sup>

**Chapter Seven**

**ABORIGINAL HEALTH & THE DETERMINANTS OF HEALTH**

***The Problems:***

- John O’Neil, Laurel Lemchuk-Favel, Yvon Allard, and Brian Postl,  
“Community Healing and Aboriginal Self-Government”,  
in H. H. Hylton (ed.), *Aboriginal Self-Government in Canada:  
Current Trends and Issues*, 2<sup>nd</sup> ed (Saskatoon: Purich Publishing  
Inc., 1999) 130-156.....VII, 1-14

### ***Impediments:***

“The Context of Delivery of Health Services to Status Indians and Inuit by Medical Services Branch,” Program Transfer and Policy Development, Medical Services Branch (Report), September 6, 1988.....VII, 15-25

### ***Suggested Solutions:***

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapter 10..... VII, 26-46

“The Treaty Right to Comprehensive Health Care,” *First Nations Health News*.....VII, 47-48

“Native Leaders Fear Results of Health Transfer,” *Wawatay News*, September 23, 1999. ....VII, 49

### **Supplementary Readings**

*Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Ministry of Indian Affairs and Northern Development, 1997)

Bill 43, *An Act Respecting the Regulation of Health Professions*, S.O. 1991, c. 18, s. 35.

Bill 56, *An Act Respecting the Regulation of Midwifery*, S.O. 1991, c.31, s. 8.

Bill 119, *An Act to Prevent the Provision of Tobacco to Young Persons*, S.O. 1994, c. 10, s.13.

March 9<sup>th</sup>

### **Chapter Eight**

### **ACCESS TO AND THE PRICING OF PRESCRIPTION DRUGS**

R. G. Elgie, “Regulating Prices of Patented Pharmaceuticals in Canada: The Patented Medicine Prices Review Board” (May 1996) 13: 2 Food, Drug, Cosmetic and Medical Device Law Digest 80--83. ....VIII, 1-9

M. Shuchman, “Drug firm threatens suit over M.D.’s product review,” *Globe and Mail*, Wed., Nov. 17, 1999. ....VIII, 10-12

S. Jacobzone, “Pharmaceutical Policies in OECD Countries: Reconciling Social and Industrial Goals (OECD Report: 2000). ....VIII, 13-36

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapter 9 (pp189—201)..... VIII, 37-58

Rosalie Gardiner, "AIDs – the Undeclared War", Towards Earth Summit 2002, Social Briefing no. 1, available online at <http://www.earthsummit2002.org/es/issues/AIDS/hiv.pdf>

.....VIII, 59-68

Amir Attaran & Lee Gillespie-White "Do patents for antiretroviral drugs constrain access to AIDS treatment in Africa?" (2001) 286 JAMA 1886-1892.....VIII, 69-75

David Spurgeon, "Canada forced to honour Bayer's patent on ciprofloxacin" *BMJ* 2001;323:956( 27 October ).....VIII, 76

March 16<sup>th</sup>

## **Chapter Nine**

### **HEALTH REFORM: CLOSING HOSPITALS AND THE SHIFT TO HOME CARE AND REGULATING THE LOCATION, NUMBER AND INCOME OF DOCTORS**

D. Orentlicher, "Paying Physicians More to Do Less: Financial Incentives to Limit Care" (1996) 30 University of Richmond Law Review 155.....IX, 71-104

*Waldman v. British Columbia (Medical Services Commission)* (1999) 177 D.L.R. (4<sup>th</sup>) 321 (B.C.C.A.) (headnote).....IX, 105-107

*Rombaut v. New Brunswick (Minister of Health and Community Services)* [2001] N.B.J. No. 243,.....IX, 108-131

Colleen M. Flood, "Moving Medicare Home: The Forces Shifting Care Out of Hospitals and into Homes" in T. Caulfield & B von Tigerstrom (eds), *Health Reform & the Law in Canada: Meeting the Challenge*.....X, 1-14

## Supplementary Reading

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapters 4 & 5, "Investing in Health Care Providers" and "Primary Health Care and Prevention".....IX, 1-45

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Chapter 4.....IX, 46-70

G. L. Stoddart and M. L. Barer, "Will increasing medical school enrolment solve Canada's physician supply problems?" (1999) 161 (8) Canadian Medical Association J. 983

J. Ibbitson, "Big changes proposed for family doctors," *Globe and Mail*, Wed., Dec. 22, 1999

M. Mills, "Canada's health-care crisis: we may already have the cure," *Globe and Mail*, Tues., Jan., 18, 2000

L. Priest, "Busy M.D.'s rake in huge OHIP fees," *Globe and Mail*, Tues., March 28, 2000.

G. L. Stoddart, M. L. Barer, R. G. Evans, V. Bhatia, "Why Not User Charges? The Real Issues" The Premier's Council on Health, Well-being and Social Justice, September, 1993.

C. M. Flood, "Will Supplementary Private Insurance Reduce Waiting Lists?" *Canadian Health Facilities Law Guide*, September 24, 1996

S. M. Hutton, "Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change" (1989) 47 *University of Toronto Law Review* (Supp.) 780

M.L. Barer and L. Wood, "Common Problems, Different Solutions: Learning from International Approaches to Improving Medical Services Access for Underserved Populations" (1997), 20:2 *Dalhousie Law Journal* 321

Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada*, Final Report, November 2002, Chapter 8, "Home Care: The Next Essential Service".....X, 15-32

The Senate, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians – The Federal Role, Volume Six: Recommendations for Reform*, Chapters 8 & 9.....X, 33-55

*Lalonde v. Ontario (Commission de restructuration des services de sante)* 6 O.R. (3d) 505 [2001] O.J. No. 4767 (Montfort Hospital Case)

*Pembroke Civic Hospital v. Ontario (Health Services Restructuring Commission)* [1997] O.J. No. 3142 (No. 394/97)

Health Services Restructuring Commission, News Release -- Health Services Restructuring Commission Releases Metro Toronto Plans, March 6, 1997

Janet E. Fast et al., *Conceptualizing and Operationalizing the Costs of Informal Elder Care* (Final Technical Report to the National Health Research Development Program (NHRDP) March 17, 1997), p. 1-15

J. Coutts, "Health-care cuts hit women hardest, economists told", *The Toronto Globe and Mail*, Monday, August 25, 1997, p. A5

March 23rd

**Chapter Ten**

**TO THE MARKET!: MANAGED CARE AND MANAGED COMPETITION**

- Robin Toner and Sheryl Gay Stolberg, "Decade After Health Care Crisis, Soaring Costs Bring New Strains" The New York Times, August 11, 2002.....XI, 1-16
- Marie C. Reed, Ha T. Tu, "Triple Jeopardy: Low Income, Chronically Ill and Uninsured in America", Issue Brief No. 49, February 2002, online at <http://www.hschange.org> .....XI, 17-23
- A. C. Enthoven, "The History and Principles of Managed Competition" (1993 Supp.) 12 Health Affairs 24. ....XI, 24-48
- Editorial, "Score One for Accountability on Managed Care Front", May 14, 2001.....XI, 49-50
- Tanya Albert, "Pennsylvania court rules that ERISA does not exempt health plans from liability" May 7, 2001.....XI, 50-53
- Tanya Albert, "Higher Accountability for HMO Medical Directors", May 14, 2001.....XI, 53-56
- Lauren Randel et ors, "How Managed Care Can Be Ethical", (2001) 20: 4 Health Affairs 43—56.....XI, 57-70
- Supplementary Reading
- D. Mechanic, "Managed Care: Rhetoric and Realities" (1996) 31(2) Inquiry 124.
- Michael T. Cahill & Peter D. Jacobson, "Pegram's Regress: A Missed Chance for Sensible Judicial Review of Managed Care Decisions" (2001) 27 AM. J.L. & Med. 421

March 30<sup>th</sup>

## **Chapter Eleven**

### **CONTRACTING OUT TO PRIVATE FOR-PROFIT CLINICS AND INTERNAL MARKET REFORM**

- S. Rathgeb Smith and M. Lipsky, "Privatization in Health and Human Services: A Critique" (1992) 17 (2) Jnl. of Health Politics, Policy and Law 233.....XII, 1-11
- P.J. Devereaux et ors, "A Systematic Review and Meta-Analysis of Studies Comparing Mortality Rates of Private For-Profit and Private Not-for-Profit Hospitals" (2002) 166 (11) CMAJ 1399-406.....XII, 12-19
- T. Arnold, "Colon screening available for \$1,000.00" April 24, 2002, National Post.....XII, 20-21
- T. Caulfield, C. M. Flood & B von Tigerstrom, "Comment: Bill 11, Health Care Protection Act" (2000) 9: 1 Health Law Review 22-27.....XII, 22-27

J. L. Grand, "Competition, Cooperation, Or Control? Tales From the British National Health Service" (1999) 18: 3 Health Affairs 27.....XII, 28-34

### Supplementary Reading

P. Allen, "Contracts in the National Health Service Internal Market" (1995) 58 (3) Modern Law Review Limited 321.

Carolyn Hughes Tuohy, Colleen M. Flood, and Mark Stabile, "How Does Private Finance Affect Public Health Care Systems? Marshalling the Evidence from OECD Nations"(working paper submitted to the Jnl of Health Politics Policy and Law, April 2001)

S. M. Hutton, "Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change" (1989) 47 University of Toronto Law Rev. (Supp.) 780.

G. L. Stoddart, M. L. Barer. R. G. Evans, V. Bhatia, "Why Not User Charges? The Real Issues" The Premier's Council on Health, Well-being and Social Justice, September, 1993.

C. M. Flood, "Will Supplementary Private Insurance Reduce Waiting Lists?" *Canadian Health Facilities Law Guide*, September, 1996.

April 6th

### **Chapter Twelve**

### **ANATOMY OF A CRISIS: LEARNING FROM SARS**

*Learning from SARS: Renewal of Public Health in Canada: A Report of the National Advisory Committee on SARS and Public Health* (Health Canada, October 2003). Online at <http://www.hc-sc.gc.ca/english/protection/warnings/sars/learning.html> ("the Naylor Report")

C. M. Flood & A. Williams, "A Tale of Toronto: National and International Lessons from the SARS Crises" (forthcoming Michigan State University Detroit College of Law, 2004)



# Health System Law and Policy

## **January – April 2004**

Professor Colleen M. Flood

Room 409

ph: 416-978-4929

email: colleen.flood@utoronto.ca

Seminar: Tuesday: 4:10-6:00 pm, FA2 (Solarium)

Office Hours: Call or email me to make an appointment.

### **Objectives of Course**

The objectives of this course are four-fold:

- to survey a range of topical health system law and policy issues and to acquire the analytical tools needed to understand and resolve these issues;
- to critically analyze how laws and regulations can shape the structure and dynamics of a health care system or respond to different problems that arise within a system
- to consider what other disciplines, such as economics, political science, philosophy, and sociology, have to contribute to an analysis of these issues;
- further develop your research and writing skills; and
- assist you to write a paper of publishable quality.

### **Grade Determination**

#### **Class Participation -- 10%**

(Class participation mark includes the submission of a six-page paper outline by **Tuesday, 24 February 2004 in class. I do not grade the outline but I will give you comments and feedback on your proposal**)

#### **Major Paper -- 90%**

(Must be submitted by **4.00 pm, 14 April 2003 (NOTE: this is the first day of examinations)**)

In organizing the time you spend on your major paper, ensure you give equal weight to 1. organization and logical flow, 2. analysis and synthesis, and 3. research. You should write a draft of your paper and have a colleague read it through to you and work on it again **BEFORE** you hand it in.

### **Plagiarism**

Plagiarism is a serious academic offense. If you have any questions regarding what constitutes plagiarism, please ask.

### **Students Living with Disabilities**

Students with permanent or temporary disabilities who would like to discuss classroom or evaluation accommodations are asked to come and see me as soon as possible. You can meet me after class or privately during office hours.

## POSSIBLE PAPER TOPICS FOR HEALTH SYSTEMS LAW AND POLICY, 2004

1. Is the *Canada Health Act* a barrier to improving the effectiveness and/or efficiency of health care? How should it be reformed? Is there a better way to govern national standards in health care in Canada?
2. How has the Charter impacted on decisions about what to fund and what not to fund in medicare? Is the Charter a positive or a negative force? Do judges have a good understanding of health policy and do they make the best decisions under s. 1?
3. How do we presently decide what health care should be publicly funded? Is there a better way to do this and, in particular, should there be a greater role for: (pick one of the following) a) The Charter b) Administrative Law c) Citizen participation or d) Explicit rationing
4. What role does judicial review play in ensuring the reasonableness or rationality of decisions about what is in and out of Medicare?
5. What impediments does the current division of constitutional powers between the federal and provincial governments pose to successful health care reform, for example, the creation of a national pharmacare plan. What governance structures should we aspire to, to ensure the best governance of Canadian Medicare?
6. Consider the case for and against devolution of financial and managerial responsibility from provincial government to Regional Health Authorities (which has occurred in all provinces except Ontario). Should Ontario follow the other provinces and devolve power away from the Ministry of Health to Regional Health Authorities? Should these Regional Health Authorities also manage the hospitals?
7. Critique the recommendations of either the Kirby or Romanow Reports. You could focus on Kirby's recommendations for a great role for the private sector. Or Kirby's recommendations for a waiting list guarantee. You could focus on Romanow's recommendations for home care or for pharmacare.
8. The Ontario provincial government is promoting the establishment of private for-profit diagnostic (MRI) clinics. What are the arguments for and against the establishment of for-profit clinics? What threat, if any, do private for-profit clinics pose to the sustainability of publicly-funded health care?
9. Analyze Alberta's *Health Care Protection Act* and the case for and against governments contracting out to competing private for-profit health care providers. Will it generate efficiencies and result in savings that can be reinvested in health care? Or will it result in a reduction in the quality of care delivered and poor working conditions for labour?

10. How should we fund home care services? Should people have some responsibility to pay for home care? Is care delivered in the home different from other kinds of medical care? Should home care services be included under the *Canada Health Act* as “insured services”? If so should the existing prohibitions on "two tier" (preventing people from buying additional quality of care or additional services with private funds) and "user charges" remain?
11. Should prescription drugs be included under the *Canada Health Act* as “insured services”? If so should the existing prohibitions on "two tier" (preventing people from buying additional quality of care or additional services with private funds) and "user charges" remain?
12. Consider the potential impact of one or more of the following on Canada's publicly funded health care system:
  - a. NAFTA
  - b. GATS
  - c. TRIPS
13. Health reformers sometimes suggest giving providers a financial incentive to be sensitive to the cost of the services they deliver or recommend. One suggestion is payment by capitation (a fee for every patient for a fixed period) or giving groups of doctors and nurses a budget to manage covering the needs of their patients (drugs, home care, hospital services). What are the advantages and disadvantages of moving away from the present fee-for-service system to a capitation system? In such a case are existing laws and regulations ensuring the quality of care delivered sufficient?
8. Quebec, in pursuit of a prescription drug plan covering all of its system, has implemented a managed competition system. How does this model work? What have been the problems of implementation and what are the prospects for success? What are the advantages and disadvantages of a managed competition system as opposed to simply publicly funding all needed drugs?
9. Describe how decisions are currently made under OHIP as to which services are publicly funded. Is the present process fair? What opportunities are there to review these decisions? How could this process be improved?
10. Analyze the advantages and disadvantages of greater public participation in health care rationing decisions with reference to the Oregon Health Care Experiment, New Zealand's Core Health Services Commission and the Dutch Dunning Committee. What should be the role of citizens and patients in determining what services are publicly funded?
11. Discuss the prospects for success of the appellants in the Chaoulli case. What are the arguments for and against having a "two-tier" system in health care? Would a two-tier system reduce pressures on the public system or would it result in a public system that offered lower quality service?

12. Discuss how the desire to have a “one-tier” system with a similar level of service available nation-wide can be resolved with the different medical needs of different population groups i.e. the disabled, the elderly, or Aboriginal people? Does Canada’s emphasis on “one-size-fits-all” serve Aboriginal people well?
13. What are the causes of the waiting list problems in Canada and how do we solve this problem? Could a Patients' Bill of Rights help?
14. Assess regulation of some element of the private health care sector (e.g. one of the following):
  - a. In vitro fertilization clinics
  - b. drugs,
  - c. home care services,
  - d. biotechnology,
  - e. private rest homes
  - f. medical equipment
 Is there any truth to the claim that we are so preoccupied with the public sector that we do not have effective regulation of the private sector?
15. Myriad, a US company, claims that the Ontario government must recognize their patent and purchase their BRCA1/BRCA1 genetic test for breast cancer rather than rely on a test produced locally. Is Myriad's claim valid? What are the policy implications for the Ontario Ministry of Health?
16. Consider and discuss what impact the proximity of the U.S. has upon the Canadian health care system i.e. medical malpractice claims, Canadian buying in the U.S. services that are not available here or for which there are long waits, the flow of physicians and nurses from the U.S. to Canada etc. What stresses does this proximity put on formulation of health policy in Canada?
17. Examine the role of self-regulating health professions and whether self-regulation is sufficient to ensure the quality of health services supplied
18. Discuss whether or not medical malpractice suits protect the quality of health care services supplied. How can the tort system be reformed to better protect the quality of health care services?
19. Consider whether physicians, hospitals and other health care providers should be able to argue in defense to a medical malpractice action that government or a private insurer limited the resources at their disposal.
20. Analyze the advent of Telemedicine *or* Internet medicine and what if any regulatory changes are needed in light of these advances in technology.

21. Analyze and discuss the legal and other mechanisms available to ensure that there are sufficient physicians in remote and rural areas.
22. Discuss and critique the present regulatory protection offered by Canada's Health Protection Branch. What, if anything, needs to be done to improve the quality of regulatory oversight?
23. What (if any) changes need to be made to Ontario's approach to public health to avoid instances like the Walkerton tragedy. Are sufficient resources being devoted to public health or are the benefits too long-term for the realization of political capital and so therefore public health does not attract sufficient investment?
24. Is there conflict between health policy values and Charter values (as played out in *Eldridge*, *Cameron*, *Auton*, *Montfort*, etc.)? Do you think that the judges in these Charter cases have a sufficient understanding of the structure and dynamics of the Canadian health care system?
25. How should public health be funded? Who should have responsibility for governance of public health, the provinces or the federal government?
26. Did the Canadian health care system respond appropriately during the SARS crisis? If not, what reforms are needed to ensure that we respond better in the future in the event of another SARS crisis?
27. A Health Council has been established to ensure better accountability and reporting in the Canadian health care system. Do you think the Health Council will improve the quality of health care debate and reform across Canada? Why/why not?
28. Discuss the legacy of Jean Chrétien and his government to health policy and health reform through the lens of the Health Accord 2000 and the Health Accord 2003. Has the Liberal government, in your view, met the challenges in health care in a way that will ensure the sustainability of publicly-funded health care?
29. Critique the Republicans new prescription plan for Medicare beneficiaries in the US. Who are the winners and loser under this new plan? Is it sustainable?
30. Will the US ever have publicly-funded health care for all its citizens? What conditions will be necessary for this to happen? If you don't think it's possible, explain why that is so.

**THESE TOPICS ARE ONLY SUGGESTIONS – YOU MAY USE ANY QUESTION AS A BASE TO DEVELOP A DIFFERENT QUESTION – OR YOU MAY THINK OF A COMPLETELY DIFFERENT QUESTION. PICK SOMETHING YOU FEEL PASSIONATE ABOUT.**



▣<sup>TOP</sup> (AVAILABLE ONLINE AT  
<http://www.law.utoronto.ca/healthlaw/>)

## Health Law Journals

This list of health law journals was prepared by Ted Tjaden (tel: 978-3749), Coordinator of Information Services at the [Bora Laskin Law Library](#). The list is intended for use by members of the [U of T Faculty of Law](#). Most of the links below assume you are using a Web browser on campus or have a proxy server on your computer at home. [Information on setting up a proxy server at home](#) is available. All journals are full-text unless otherwise indicated. If needed, search [UTCat](#) for titles or [search all electronic resources by title available online through Robarts](#). The links in the table below are divided into the following categories:

- [Health Law Journals Available through U of T Electronic Resources](#)
- [Online Journal Indexes For Searching for Articles](#)
- [List of Health Law Journals Available on Westlaw, Lexis and QL](#)

## Health Law Journals Available through U of T Electronic Resources

- [AG Bioethics Forum](#)

From the "free" website of the Iowa State University Bioethics Program. The *Forum* is a newsletter that covers a range of ethical issues in the non-medical life sciences. Since October 1988, philosophers and life scientists have grappled in these pages with everything from herbicide resistant plants to transgenic animals.

- [Canadian Bioethics Report](#)

From the "free" website of the CMA.

- [Ethics](#) (via Expanded Academic ASAP)

Click on Proceed and then choose the link for Expanded Academic ASAP 1996 - current, with access to backfile (1980 - 1995).

- [Hastings Center Report](#)

Citations: Feb 1988 - current; Abstracts: Feb 1988 - current; Full Text: Jan 1994 - current; Image: Feb 1988 - current; Text+Graphics: Nov 1996 - current

- [Health Affairs](#)

Full-text, graphics and images. Scope: From Vol. 6(4) 1987

- [Health Care Management Review](#)

Full-text, graphics and images. Scope: From Vol. 4(2) 1979

- [Health Legislation and Regulation](#)

Citations and abstracts only. Scope: From Nov 9, 1988; Vol.14, Iss.44.

- [JAMA; The Journal of the American Medical Association](#)

Full-text, graphics and images

- Journal of Law, Medicine & Ethics, The

Citations: Jan 1989 - current; Abstracts: Jan 1989 - current; Full Text: Jan 1997 - current;  
Image: Jan 1997 - current; Text+Graphics: Jan 1997 - current

- Journal of Medical Ethics

Citations: Mar 1991 - current; Abstracts: Mar 1991 - current; Full Text: Feb 1995 - current;  
Image: Mar 1992 - current; Text+Graphics: Feb 1996 - current

- The Journal of Mental Health Policy and Economics

Abstracts for current year; tables of contents for earlier years; no full text

- Kennedy Institute of Ethics Journal

v.6:no.1 (1996:Mar.) - . The *Kennedy Institute of Ethics Journal* offers a scholarly forum for diverse views on major issues in bioethics, such as active euthanasia, fetal tissue research, human embryo cloning, genetics, health care reform, and organ transplantation. Each issue includes "Scope Notes," an overview and extensive annotated bibliography on a specific topic in bioethics, and "Bioethics Inside the Beltway," a report written by a Washington insider updating bioethics activities on the federal level. Published for the Joseph and Rose Kennedy Institute of Ethics.

- Lancet

Citations: Jan 1988 - current; Abstracts: Jan 1988 - current; Full Text: May 1995 - current;  
Image: Dec 1995 - current; Text+Graphics: Dec 1995 - current

- Lancet

OVID version.

- MEDLINE (OVID)

OVID version. 1996 to current.

- MEDLINE (Cambridge Scientific)

1992 to present.

- MEDLINE (OCLC FirstSearch)

1965 to current.

- New England Journal of Medicine (OVID)

Full-text (over 300 issues)

- Political Studies

Citations: Mar 1989 - current; Abstracts: Mar 1989 - current.

- Philosophy and Public Affairs

Citations: Jan 1989 - current; Abstracts: Jan 1989 - current; Full Text: Jan 1994 - current; Image: Jan 1990 - current; Text+Graphics: Oct 1996 - current

- Political Theory

Scope: from Vol. 19(1) 1989 to present

- Trends in Health Care, Law & Ethics

Citations and abstracts only. Scope: Citations: Jan 1993 - Oct 1995; Abstracts: Jan 1993 - Oct 1995

## **Journal Indexes (Related to Law or Health)**

Use the indexes below to search for law-related articles. Search by author, title, subject or keyword.

- Index to Canadian Legal Literature

Scope: 1987 to current

- Index to Legal Periodicals and Books (Wilson)

Scope: August 1981 to current

- Index to Foreign Legal Periodicals

Scope: 1985 to current

- Expanded Academic Index

Click on Proceed and then choose the link for Expanded Academic ASAP 1996 to current, with access to backfile (1980 - 1995).

Use this database to find information on: Astronomy, Religion, Law, History, Psychology, Humanities, Current Events, Sociology, Communications and the General Sciences.

- Canadian Periodical Index

Click on Proceed and then choose the link for CPI.Q 1988 - Jul 1999.

Use this database, designed for public, academic, and school libraries, to search a comprehensive list of Canadian and international journals, magazines, newspapers, and other references. CPI.Q. includes more than 400 titles with full text articles from over 160 of these periodicals, as well as Gale Research reference data and the full text of selected sections of The Globe and Mail, Canada's national newspaper.

- BIOETHICSLINE Plus

1973 to current. Maintained by the U.S. National Library of Medicine and the Kennedy Institute of Ethics at Georgetown University, BIOETHICSLINE Plus focuses on questions of ethics and public policy in the fields of health care and biomedical research. The database provides citations on such topics as euthanasia, organ donation and transplantation, the allocation of health care resources, AIDS, patients' rights, codes of professional ethics, new reproductive technologies, genetic engineering, abortion, behavior control, mental health therapies, and human experimentation. BIOETHICSLINE Plus contains over 44,000 records from 1973 to the present.

- HealthSTAR

HealthSTAR contains citations to the published literature on health services, technology, administration, and research. It focuses on both the clinical and non-clinical aspects of health care delivery. The following topics are included: evaluation of patient outcomes; effectiveness of procedures, programs, products, services and processes; administration and planning of health facilities, services and manpower; health insurance; health policy; health services research; health economics and financial management; laws and regulation; personnel administration; quality assurance; licensure; and accreditation.

- Science Citation Index (Expanded)

1993 to date. The Science Citation Index is a multidisciplinary database, with searchable author abstracts, covering the journal literature of the sciences. It indexes 5,300 major journals across 164 scientific disciplines, covering approximately 2,000 more journals than its SCI print and CD-ROM counterparts, with all cited references captured.

- Social Sciences Citation Index

1993 to date. The Social Sciences Citation Index is a multidisciplinary database, with searchable author abstracts, covering the journal literature of the social sciences. It indexes 1,700 journals spanning 50 disciplines, as well as covering individually selected, relevant items from over 3,300 of the world's leading scientific and technical journals.

- Web of Science

The Web of Science is the powerful new interface that provides Web access to the Science Citation Index Expanded(TM), Social Sciences Citation Index, and Arts & Humanities Citation Index (formerly SciSearch, Social SciSearch, and Arts & Humanities Search). Designed exclusively by the Institute for Scientific Information (ISI) for its proprietary Citation Databases, the Web of Science provides researchers with navigational and retrieval functions only possible through the powerful combination of citation indexing and enabling Web technology.

### **List of Health Law Journals Available on Westlaw, Lexis and QL**

The following journals or databases are available on one or more of Westlaw, Lexis or QUICKLAW.

- American Journal of Law & Medicine

Lexis LAWMED from v.7, 1981

Westlaw AMJLM from v.15, 1989, Full Coverage 19:3 (1993)

- Andrews Health Care Fraud Litigation Reporter

Lexis NEWS (ANDRWS) from March 1996

Westlaw ANHCFLR from November 1996

- Andrews Health Law Litigation Reporter

Lexis NEWS (ANDRWS) from March 1996  
Lexis HLTHLJ from v.1, 1993  
QUICKLAW HLJA from v.5, 1997

- Health Law Vigil

Lexis HEALTH (VIGIL) from January 1984 to December 1988

- Health Lawyer

Westlaw HTHLAW from v.4, Summer 1990

- Health Matrix: Journal of Law-Medicine

Westlaw HTHMTX from (1991) Full Coverage 3:2 (1993)

- Hospital Law

Lexis HEALTH (HOSPLW) from January 1984 to June 1998

- Issues in Law and Medicine

Westlaw ISSULM from 1985

- Journal of Health Politics, Policy & Law

Westlaw JHPPL from v.15, 1990

- Journal of Law & Health

Lexis JLAWH from v.8 nos.1 and 2, 1993  
Westlaw JLHEALTH from v.1, 1985

- Journal of Law, Medicine & Ethics

Westlaw JLMEDETH from 1998

- Journal of Legal Medicine

Lexis GENMED (JLM) from March 1996  
Westlaw JLEGMED from v.13, 1992

- Medical Devices Litigation Reporter

Lexis NEWS (ANDRWS) from March 1996  
Westlaw ANMDLR from November 1996

- Medical Malpractice Law and Strategy

Lexis LEGNEW (LEADER) from 1996  
Westlaw MEDMALLST from March 1995

- Medical/Legal Aspects of Breast Implants

Lexis LEGNEW (LEADER) from 1996

- Medical & Medicaid Law Bulletin

Lexis NEWS (LRP) from February 1996

- Medicine and Law

Westlaw MEDLAW from 1997

- NAAG Health Care Fraud Report

Westlaw NAAGHCFR from June 1996

- NAAG Medicaid Fraud Report

Lexis NEWS (AGMFRD) from January 1995  
Westlaw NAAGMFR from January 1995

- Nelligan Power Newsletters (Labour, Family, Condo, Health, Employment)

QUICKLAW NPNL from 1992

- Quinnipiac Health Law Journal

Westlaw QHTHLJ from v.1, 1996

## **WWW Research Tools for Health Law**

- Findlaw  
<http://lawcrawler.findlaw.com/index.html>
- Cornell Health Law Links  
<http://www.law.cornell.edu/topics/health.html>
- HyperGuide to the Mental Health Act (UK)  
<http://www.hyperguide.co.uk/mha/>
- The Health Law Resource  
<http://www.netreach.net/~wmanning/>
- Links from Center for Health Law Studies (St. Louis School of Law, Center for Health Law Studies)  
<http://lawlib.slu.edu/healthcenter/index.html>
- Health Policy Sites  
<http://www.ncsl.org/programs/health/forum/index.htm>
- Health Policy (Idea Central)  
<http://tap.epn.org/idea/>
- The Medical and Public Health Law Site  
<http://plague.law.umkc.edu>
- Reuters Health Links  
<http://www.reutershealth.com>

- Bioethicsline  
<http://www.healthgate.com/choice/AMA/search.html>

### **WWW Online Journals for Health Law**

- Canadian Medical Association Journal  
<http://www.cma.ca/cmaj/index.htm>
- Ethica: Ethics and Health: An International & Comparative Arena  
<http://www.hf.uib.no/i/Filosofisk/ethica>
- Journal of Health Politics, Policy and Law  
<http://www.jhppl.org/>
- The Milbank Quarterly: A Journal of Public Health and Health Care Policy  
<http://www.hcp.med.harvard.edu/Milbank/quarterly/index.html>
- RISK (Journal of the Risk Assessment and Policy Association)  
<http://www.fplc.edu/tfield/profrisk.htm>
- New England Journal of Medicine  
<http://www.nejm.org/content/index.asp>
- Health Law News (from Law Journal EXTRA!)  
<http://www.ljx.com/practice/health>

### **Government Sites for Health Law**

- Health Canada  
<http://www.hc-sc.gc.ca>
- Alberta Ministry of Health  
<http://www.health.gov.ab.ca>
- British Columbia Ministry of Health  
<http://www.hlth.gov.bc.ca>
- Manitoba Ministry of Health  
<http://www.gov.mb.ca/health>
- New Brunswick Ministry of Health  
<http://www.nih.gov>

### **Health Law Academic Programs**

#### *Undergraduate specialization*

- Dalhousie  
<http://www.dal.ca/law/hli/index.html>
- St. Louis  
<http://lawlib.slu.edu/centers/hlthlaw/hlthlaw.htm>
- Houston  
<http://www.law.uh.edu/healthlaw/>
- Boston University  
<http://www.bumc.bu.edu/departments/homemain.asp?departmentID-95>
- Case Western Reserve  
<http://lawwww.law.cwru.edu>
- Maryland  
<http://law.ab.umd.edu>
- Seton Hall  
<http://www.shu.edu/law/HeLPP/>

#### *Graduate specialization*

- DePaul  
<http://www.droit.umontreal.ca>

- Loyola  
<http://www.luc.edu/schools/law>
- UCLA Center for Health Policy Research  
<http://www.healthpolicy.ucla.edu>
- The Institute of Mental Health Law  
<http://www.imhl.com>
- The European Institute of Mental Health Law  
<http://www.euroimhl.com>
- The Center for Reproductive Law and Policy  
<http://www.crlp.org>
- The Allan Guttmacher Institute  
(Reproductive Health Research, Policy Analysis and Public Education)  
<http://www.agi-usa.org>
- Institute of Medicine, Law and Bioethics (UK)  
<http://www.liv.ac.uk:80/~scooper/imlab.html>

### **Canadian Bioethics Institutes**

- Clinical Research Institute of Montreal Centre for Bioethics  
<http://www.ircm.umontreal.ca/bioethique>
- University of British Columbia  
<http://www.ethics.ubc.ca>
- University of Toronto  
<http://www.utoronto.ca/jcb>
- York University  
<http://www.yorku.ca/mclaughlin/ethics/Ethics.htm>
- Dalhousie University  
<http://www.medicine.dal.ca/BIOETHICS/>
- St. Joseph's College  
<http://www.connect.ab.ca/~ethics/>
- University of Alberta  
<http://www.ualberta.ca/~ethics/bethics.htm>

### **Professional Health Law Organizations**

- Canadian Bar Association Health Law Section  
<http://www.cba.org>
- American Society for Law, Medicine & Ethics  
<http://www.aslme.org>
- American Health Lawyers Association  
<http://www.healthlawyers.org>
- American Association of Nurse Attorneys  
<http://www.taana.org>
- American Association of Legal Nurse Consultants  
<http://www.aalnc.org>
- American Academy of Psychiatry and the Law  
<http://www.cc.emory.edu/AAPL>
- American College of Legal Medicine  
<http://www.aclm.org>
- American Bar Association Health Law Section  
<http://abanet.org/health>

### **Related Professional Organizations and Sites**

- Canadian Bioethics Society
- Canadian HIV/AIDS Legal Network and Lexis



